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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of:	)	
	)	
Closed Captioning and Video	)	
Description of Video Programming	)	**MM Docket No. 95-176**
	)	
Implementation of Section 305 of the	)	
Telecommunications Act of 1996	)	
	)	
Video Programming Accessibility	)	

RESPONSE OF LIFETIME TELEVISION

Lifetime Television ("Lifetime") hereby submits its response to petitions for reconsideration of the Commission's Report and Order in the above-referenced proceeding on closed captioning.[1] Lifetime, a 24-hour, advertiser supported basic cable network targeted to women, participated in the earlier phase of this proceeding, affirming its long-standing commitment to program accessibility but urging the Commission to pursue the goal of increased accessibility with careful attention to the impact on programmers.[2] Specifically, Lifetime encouraged the Commission to strike a balance between increasing the availability of closed captioned programming and maintaining the requisite flexibility for a robust and innovative

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[1] FCC 97-176 (released August 22, 1997) (the *"Order"*).

[2] *See* Lifetime Reply Comments at p. 4 (*"Reply Comments"*). Lifetime, which currently serves a national audience of over 69 million households, began captioning select original programs in 1989.

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program market. In large part, the rules adopted through the Commission's recent *Order* strike such a balance. Accordingly, as set forth in greater detail below, Lifetime opposes petitions for reconsideration that request major modifications in the Commission's new rules. However, Lifetime supports other petitioners who seek adjustments on two important points: (i) the mechanisms for measuring programmers' compliance with the biennial benchmarks for "new programming" (absolute hourly benchmarks rather than the original percentage phase-in approach); and (ii) the elimination of the eight-year phase-in period for new programming networks.

1. The Commission's overall approach toward implementing closed captioning should be retained.

In adopting its rules, the Commission recognized that the administrative and economic burdens of captioning are such that the goal of maximizing program accessibility realistically cannot be achieved overnight. *See, e.g., Order* at paras. 11 and 42. Thus, Section 79.1 of the new rules provides for a phase-in of captioning requirements for both "new" and "library" (pre-rule) programming. In addition, Section 79.1(d) exempts from the requirements certain categories of programming for which captioning would pose an unreasonable burden. Finally, at the conclusion of the transition period, the rules call for substantial, rather than 100%, compliance.[3] This policy takes into account the vast array of unforeseeable circumstances and unique situations that make a strict 100% captioning requirement impossible and eliminates much of the administrative burden of the Commission's having to deal with such "de minimis" situations on a case-by-case basis. Thus, while the rules significantly advance the cause of

[3] Sections 79.1(b)(iv) and 79.2 of the rules require 95% captioning of new programming and 75% of library programming.

program accessibility, they seek to do so in a way that is workable, without jeopardizing the vitality of the programming community. Consistent with the concerns expressed in its *Reply Comments*, Lifetime opposes petitions for reconsideration that seek: (i) major reductions in the transition periods; (ii) elimination of categorical exemptions; and (iii) an increase in the compliance standard at the end of the transition periods to 100% captioning.[4] Lifetime urges the Commission to preserve the basic balance its rules sought to strike.

2. The new rules would be improved with several minor adjustments.

While Lifetime supports the Commission's overall approach to the implementation of captioning, it concurs with petitions for reconsideration that seek adjustments in provisions of the rules that apply to the manner in which compliance with interim benchmarks for captioning of new programming will be measured and to the application of any phase-in periods for new networks.[5] It is obvious from the *Order* that the Commission's intent was to phase in captioning of both new and library programming for all programmers. The *Order* also reflects the Commission's recognition of the financial obstacles facing the launch of new networks and its plan to relieve them from the added burden of captioning during their formative years. As petitions for reconsideration recognize, however, the reasonable transition period and the new network relief that the Commission intended to provide are more illusory than real.[6]

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[4] *See* Comments of Self Help for Hard of Hearing People, Inc. at 3-7 and Request for Reconsideration of the Captioning Mandates of National Association of the Deaf and Consumer Action Network at 2-13.

[5] *See* Petition for Reconsideration of Outdoor Life Network, L.L.C., Speedvision Network, L.L.C, and The Golf Channel at 6-7, 10-11 and 12-14.

[6] *Id.* at 5.

a. The fixed hourly benchmarks per quarter will not afford meaningful phase-in periods for most programmers.

From the outset of its efforts to implement increased program accessibility, the Commission recognized the need for a reasonable transition period[7] and ultimately made a gradual phase-in of captioning an integral component of its rules:

> [W]e must take into consideration that this goal cannot be reached immediately due to the limited number of available captioners and captioning services in existence, the increased demand for captioning which will be created by Section 713, and the cost of captioning.

Order at para. 41. That the Commission contemplated affording programmers a transition period of eight years to achieve full compliance for captioning of new programming also is apparent from the *Order*:

> We adopt an eight year transition period for video programming first published or exhibited after the effective date of our rules ("new programming").
>
> * * *
>
> The transition schedule will phase in closed captioning for new nonexempt video programming until full accessibility is reached after the end of the eight year transition period.

Order at paras 41 and 44. During the eight-year period, the Commission also endorsed a gradual increase in the amount of captioning of new programming at two-year intervals:

> Beginning with the year 2000, distributors will be required to meet increasing closed captioning benchmarks for new nonexempt programming.

Order at para. 44.

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[7] *See* Notice of Proposed Rulemaking in MM Docket No. 95-176, 12 FCC Rcd 1044 (1997) at 1065 ("*NPRM*").

Unfortunately, as a result of the numerical standards that the Commission selected for measuring compliance with the interim benchmarks, most networks will not have the benefit of the intended, eight-year phase-in. In the *NPRM,* the Commission proposed that the required amount of captioned non-exempt new programming would increase at each two-year benchmark during the transition, until 95% of such programming was captioned at the end of eight years.[8] Under this approach, each network would be permitted to achieve full compliance by increasing the amount of its captioned new programming by 25% at two-year intervals.[9]

The Commission's final rules, however, depart from the *NPRM's* approach in that they require captioning of a fixed number of hours per calendar quarter rather than of graduated percentages of a network's non-exempt new programming. Moreover, the 450 hours that constitutes the first two-year benchmark represents 25% of the programming of a network that airs <u>100%</u> of new programming during the relevant hours of the day. The 450 benchmark represents 25% of <u>20</u> hours of nonexempt new programming per day for 90 days of a quarter. This approach yields completely different results than a requirement of captioning 25% of a network's new programming. Notwithstanding its commitment to original programming,[10] Lifetime, like most non-news or non-sports cable networks, airs a mix of new and pre-rule

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[8] *NPRM* at 1066.

[9] The rules also require that a programmer maintain the same average level of captioning as it provided during the first six months of 1997, even if the amount of captioned programming exceeds the applicable benchmark requirement at the time. *See* Section 79.1 ((b)(3) of the rules.

[10] *See* Reply Comments of Lifetime Television in RM 91-67, Petition to update Cable Television Regulations and Freeze Existing Cable Television Rates of Consumers Union and Consumer Federation of America, at 5-6.

programming. Currently, the amount of Lifetime's non-exempt new programming is significantly less than 450 hours per quarter, and it is unlikely that its program mix will change significantly by the arrival of the first benchmark in 2000. However, Lifetime does expect to caption more than 25% of its new and pre-rule programming by 2000, thereby exceeding what it understood to be the interim benchmarks for all programming proposed in the NPRM. However, under Section 79.1(b) of the rules, a network that airs less than 450 hours of non-exempt new programming at the first two-year point (or less than 900 hours at the second point, and so forth) must caption 95% of all the non-exempt, new programming it airs.

Thus, as a practical matter, Lifetime will have only a two-year transition period until it must caption 95% of all of its new programming. Lifetime believes that many, if not most, cable programmers will find themselves in this situation as well. In effect, then, the eight-year transition period is simply a two-year transition, and the benefits of a phase-in are available only to a small number of program services with formats based extensively (at least 20 hours per day) on new programming.

As currently crafted, the transition period is essentially meaningless for many programmers. Surely the rules did not intend to penalize programmers with fewer than six hours of new programming per day. Even if a network has 10 hours of new programming per day, the 450-hour benchmark would require that after two years, one-half of its programming (or five hours per day) be captioned rather than two and a half hours. Nor would the requirement be phased in gradually over eight years. Thus, Lifetime supports a return to the graduated percentage approach toward compliance measurement. If, however, the Commission remains of the view that a fixed minimum number of hours of non-exempt new programming on each channel should be captioned at each two-year benchmark, Lifetime submits that the Commission should adopt an initial compliance benchmark of a required minimum of 25%, or no less than 100 hours per quarter, with subsequent benchmarks to increase proportionally. This approach would enable programmers that air a mixture of new and library programming to have the reasonable transition for captioning new programming that the Commission contemplated.

b. Relief for new networks.

Lifetime continually seeks to improve its ability to serve its audience, and, in furtherance of that goal, has explored various possibilities for creating a new network. Lifetime is currently developing a new network that would share the fundamental "Television for Women" mission but would emphasize Lifetime's critically acclaimed and popular movies. In its *Reply Comments* in this proceeding as well as in other recent Commission rulemakings, Lifetime pointed out the substantial difficulties of establishing a new cable channel and making it a viable economic proposition.[11] Adding the cost of closed captioning to an already daunting array of expenses might tip the balance against going forward for many new networks.

Although the Commission's rules provide a four-year exemption from captioning from a network's start-up date, the network must then comply with the transition benchmark in effect for other networks immediately upon expiration of the exemption period. Although Lifetime continues to believe that a five-year exemption period would provide more meaningful relief from the burden of captioning for a new network, the relief even a four-year exemption is intended to provide will be undercut substantially if the network has no transition to full captioning once the exemption period has expired. The Commission determined that for

[11] *See, e.g.*, *Reply Comments* at 4 and Reply Comments of Lifetime Television in MM Docket No. 96-133, Annual Assessment of the status of Competition in the Market for the Delivery of Video Programming, at 2.

established networks it is appropriate to provide an eight-year phase-in period. Yet, once the exemption period has run, a new network must meet the same captioning timetable that established programmers are expected to meet. For example, if Lifetime launched a new network on January 1, 1998, it would be required to caption 900 hours of new programming beginning in January, 2002, the first calendar quarter immediately following expiration of the four-year exemption. In order to comply in 2002, Lifetime would have to undertake extensive captioning efforts during the exemption period itself, thereby defeating the purpose of the exemption.[12]

An eight-year phase-in at the end of the exemption period would give new networks the full benefit of the exemption as well as offering them the transition period afforded every other network. Without the phase-in, new networks may well be discouraged. On the other hand, even with the phase-in, hearing impaired viewers will benefit from the availability of new networks and additional captioned programming at the end of the exemption period.

3. Conclusion

By and large, the course the Commission has plotted for increasing the amount of closed captioned television programming available to the public is reasonable. With the two relatively minor adjustments that Lifetime strongly supports regarding the benchmarks for new programming and the treatment of new networks, the objective of greater program accessibility

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[12] Moreover, if a meaningful transition for captioning new programming is not reinstated, new networks that provide a mix of new and library programming also will be required to caption some of their library programming in addition to 95% of their new programming once the exemption expires. *See Order* at para. 64.

can be achieved in a manner that fosters continued innovation and preserves the economic vitality of the programming industry.

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LIFETIME TELEVISION

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I, David N. Artim, hereby certify that on this, the 26th day of November, 1997, copies of the foregoing "Response of Lifetime Television" have been sent, via first-class, postage prepaid mail to the following:

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